

1978

# Corporation of the President of the Church of Jesus Christ of Latter-Day Saints, A Corporation Sole v. Douglas A. Wallace : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

-o0o-

CORPORATION OF THE PRESIDENT :  
OF THE CHURCH OF JESUS CHRIST :  
OF LATTER-DAY SAINTS, a :  
corporation sole, :

Plaintiff-Respondent, :

Case No. 15500

vs

DOUGLAS A. WALLACE, :

Defendant-Appellant, :

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BRIEF OF RESPONDENT  
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FILED

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Clerk, Supreme Court, Utah

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OF THE CHURCH OF JESUS CHRIST :  
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Defendant-Appellant, :

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BRIEF OF RESPONDENT

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which orders applied to the Fall conference of 1976 and the Spring conference of 1977. The defendant counterclaimed, alleging that the action of the plaintiff prevented him from "exercising his religion and religious beliefs, and from the exercise of his First Amendment rights of free speech and assembly and practicing his religious beliefs and fulfilling his missionary beliefs." The counterclaim was dismissed by the trial court and appealed to this court together with the temporary restraining orders. This court determined that the temporary restraining orders were lawfully issued and that the defendant's counterclaim did not state a claim upon which relief could be granted in Corporation of the President of the Church of Jesus Christ of Latter-day Saints, a corporation sole, v. Douglas A. Wallace, \_\_\_\_\_ Ut.2d \_\_\_\_\_, 573 P.2d 1285 (1978).

## II

### DISPOSITION IN LOWER COURT

A trial was had in the District Court on the issue of the permanent restraining order prior to the Fall conference of 1977 and after hearing the evidence over two days, the trial court entered its order permanently enjoining defendant "from entering upon Temple Square, Salt Lake City, Utah, during such times and under such circumstances as to interfere with, impair or abridge by his conduct, the religious services or conferences of other persons or the free exercise of religion by such other persons therein or thereon; provided, however, that this

injunction is neither intended nor is it to be construed to interfere with or abridge defendant's right to free speech and expression, or defendant's right to the free exercise of his religious beliefs at such other times and places, or under such other circumstances as to not interfere with the constitutionally protected rights to the free exercise of religion of and by other persons."

### III

#### RELIEF SOUGHT BY RESPONDENT

Plaintiff-respondent seeks to have the District Court's permanent restraining order affirmed.

### IV

#### STATEMENT OF THE CASE

Defendant-appellant's brief sets forth correctly the statement of the case, with the exception that plaintiff-respondent took issue with the timeliness of defendant-appellant's notice of appeal, and moved to dismiss the appeal on that ground, which motion was argued and denied by this court. The only issues before the court at this time have to do with the permanent restraining order.

STATEMENT OF FACTS

On Tuesday, April 6, 1976, the plaintiff corporation sole, which holds title to Temple Square in Salt Lake City, and the unincorporated association known as The Church of Jesus Christ of Latter-day Saints, were engaged in the annual general conference of said Church at the Tabernacle on Temple Square, at which time and place the defendant, in company with two associates, came into the conference session through an entranceway normally restricted by pass and commenced making their way to the podium at a time when said podium was occupied by one of the First Presidency of said Church. Defendant and his two associates were blocked from proceeding through one avenue to the podium and commenced to cross the front aisle of the Tabernacle. At this point defendant pushed an usher aside who stood in his way, the usher requesting "if he could be of help." Two security personnel then took hold of defendant and turned him around, the defendant stating in substance, "Don't touch me, I'm the Lord." The defendant was then escorted from the Tabernacle by security personnel, was interviewed briefly in the presence of a Salt Lake police officer, had a further interview with Earl Jones, Chief of Security for The Church of Jesus Christ of Latter-day Saints, and was permitted to leave.

During the interview outside the Tabernacle the defendant responded to a statement by one of his associates in

substance as follows, "We didn't make it this time," by stating in substance, "It was a matter of timing." Defendant added in substance, "Now I am familiar with the building, we won't miss next time." (R. 330, 413)

During the above incident the defendant and his associates were dressed in white clothing. Defendant was very excited during the verbal exchanges outside the Tabernacle and repeatedly asked Earl Jones to promise him on oath that he would get him an appointment with President Spencer W. Kimball, President of The Church of Jesus Christ of Latter-day Saints. (R. 414)

There had been a series of letters written to the President of The Church of Jesus Christ of Latter-day Saints prior to the conference of April 6, 1976, making demands on said President to "transfer the keys of the presidency" and the assets of the Church because of an alleged "malfeasance" in office. (Ex. 12P, 13P) Following the April 6, 1976 conference defendant mailed a "Summons and Complaint" to President Spencer W. Kimball (Ex. 5-P) and a letter to Orson Arnold, President of the Vancouver Stake of The Church of Jesus Christ of Latter-day Saints (Ex. 8-P), asserting that he, Wallace, would hold a trial on October 3, 1976, a day scheduled for the semi-annual conference of the Church, which "trial" was to be in the Tabernacle on Temple Square and to occupy part of the time which said Church regularly schedules for spiritual instruction to its leaders and members. Pursuant to a course of conduct threatening interference with the October conference session, counsel for

plaintiff obtained the first temporary restraining order restraining defendant from "interfering with the proceedings of the semi-annual general conference sessions of The Church of Jesus Christ of Latter-day Saints to be held on Temple Square, Salt Lake City, Utah, from September 30, 1976, to October 4, 1976," and further restraining defendant from "entering the premises known as the Salt Lake Tabernacle on Temple Square, Salt Lake City, Utah, during the time of the semi-annual general conference of The Church of Jesus Christ of Latter-day Saints, which time is from September 30, 1976, to the 4th day of October, 1976." This temporary restraining order was served on the defendant on a public street outside Temple Square by a Salt Lake County Deputy Sheriff. Immediately prior to the service of process defendant had come on to Temple Square, gathered a crowd of 20 to 30 people around him and began speaking concerning his grievances against the Church. At that time there were approximately 3,000 people on the grounds of Temple Square who could not get seating for the October conference then in session many of whom were attempting to listen to the proceedings of said conference over the public address system on the grounds (R. 411-418). The presence on the grounds during sessions of the conference of said Church of such a crowd of people is normal if the weather is good.

Following the October, 1976, conference the defendant continued to correspond with the President of The Church of Jesus Christ of Latter-day Saints, in which correspondence he specifically requested that the Court set aside its order of April 3, 1977, as the date on which his "trial" of the First

Presidency of the Church at the Tabernacle on Temple Square would occur. (Ex. 9-P) The format of said "trial" was specified by defendant to commence at 10:00 a.m., April 3, 1977, and to continue through 10:15 p. m. of said date (Ex. 10-P), which schedule was in direct conflict with the format of the Church's annual conference for that date (R. 361). Based upon the threats contained in said correspondence plaintiff obtained a second temporary restraining order dated March 28, 1977, by the terms of which defendant was ordered not to "interfere with the proceedings of the annual general conference sessions of The Church of Jesus Christ of Latter-day Saints to be held on Temple Square, Salt Lake City, Utah, on April 2, 1977, and April 3, 1977, in any way whatsoever," and further that "defendant be and is restrained from entering the premises known as Temple Square, Salt Lake City, Utah, and the Tabernacle thereon during the time of the annual general conference of The Church of Jesus Christ of Latter-day Saints, which time is April 2, 1977, and April 3, 1977." The temporary restraining order was served by a Salt Lake County Deputy Sheriff at the Salt Lake Airport on defendant's deplaning and prior to said conference sessions. It is conceded that the defendant has strictly complied with the terms of the temporary restraining orders and the permanent restraining order to this date.

The conference sessions of The Church of Jesus Christ of Latter-day Saints are televised and broadcast widely in this country and over the world. These sessions constitute worship services for the participants on Temple Square as well as many of

those who are listening and watching the proceedings through the electronic media. Approximately 8,000 persons are present in the Tabernacle for each of the various sessions of the Church's conferences. (R. 365,366,388)

The court expressly found that "the conduct of the defendant and his threatened conduct as set forth in the letters described, constituted and would constitute a violation of the rights of the plaintiff for which there is no adequate remedy at law; that the disruption and interference of the conference sessions of The Church of Jesus Christ of Latter-day Saints accomplished and threatened by the defendant have caused and would cause the plaintiff to suffer immediate and irreparable damage."

The trial court concluded that the plaintiff was entitled to a restraining order permanently enjoining defendant from entering upon Temple Square "during such times and under such circumstances as to interfere with, impair or abridge by his conduct the religious services or conferences of other persons or the free exercise of religion by such other persons therein or thereon." The court then added: "the same is not intended nor is it to be construed to interfere with or abridge defendant's right to free speech and expression or his right to free exercise of his religious beliefs at such other times and places or under such other circumstances as not to interfere with the constitutionally protected rights to the free exercise of religion of and by other persons."

## ARGUMENT

### POINT I

#### THE CORPORATE PLAINTIFF IN THE ACTION AT ISSUE HAD STANDING AND WAS A PROPER PARTY IN INTEREST

The court made a finding that "the unincorporated association known as The Church of Jesus Christ of Latter-day Saints exists and acts as a legal entity through the plaintiff Corporation of the President of The Church of Jesus Christ of Latter-day Saints, a Utah corporation sole, for the purpose of acquiring, holding or disposing of Church or religious society property, for the benefit of religion, for works of charity and for public worship". This language is taken from 16-7-1 U.C.A., 1953. The conduct of the defendant in attempting to get to the podium in the April, 1976 conference is the most flagrant kind of trespass. His threats to conduct "trials" of the President of the Church in the Tabernacle at times which would conflict with the format of general conference sessions scheduled for October, 1976, and April, 1977, which conference sessions were being televised and carried by radio to many parts of the world, if carried out or attempted, would constitute further trespasses. Actions for trespass are brought by the owner or person in possession of the real property where the trespass occurs and plaintiff corporation sole is the owner and in possession. The court made clear the nature of the relationship between the corporation sole and the unincorporated association when it found: "The plaintiff has a unique standing to bring its action in this case for the benefit of the members of the unincorporated

association known as The Church of Jesus Christ of Latter-day Saints". The right to bring this action is one of the incidents of "holding church or religious society property for the benefit of religion . . . and for public worship".

In Central Presbyterian Church v. Black Liberation Front, 303 F.Supp. 894 (1969), where a United States District Court in Missouri granted a preliminary injunction enjoining certain persons from disrupting church services, one of the plaintiffs in the action was a corporation. The court stated: "Defendants have prevented the plaintiff Church and its members from the right guaranteed by this section (42 U.S.C. Section 1981) to equal benefit of property." The court further observed that "defendants' actions in this case have deprived plaintiffs of the right to use their property for religious services".

## POINT II

THERE WAS NO ADEQUATE REMEDY AT LAW TO PROTECT PLAINTIFF FROM THE HARM CAUSED AND THREATENED BY THE DEFENDANT AND A PERMANENT RESTRAINING ORDER WAS PROPER

Although criminal statutes exist under the terms of which the plaintiff could invite the arrest of the defendant should further disturbance of the Church's conference sessions occur, such as Sec. 32-1-13 (disturbing public assemblies) or Sec. 32-3-3(1) (trespass) Revised Ordinances of Salt Lake City, or 76-6-206 U.C.A., 1953 (trespass), threatened criminal acts do not constitute grounds for a restraining order. In Kleinjans v. Loe, 52 H. 427, 478 P.2d 320 (1970), quoted with approval in this court's decision in Corporation of the President v. Wallace,

supra, the court stated:

"Although equity will not enjoin an act merely because it is criminal, an injunction will issue where an individual property right is also threatened or there are other appropriate circumstances. In such circumstances equity acts not to enforce the criminal law but to protect the rights of the individual from irreparable injury".

The occupation by students of the chancellor's office had threatened to interfere with the successful administration of the school and the court determined that injuries flowing from such interference "were not susceptible to pecuniary valuation and thus constituted a threat of irreparable injury under traditional equitable principles."

It should further be observed that the persistent threats of the defendant coupled with his conduct of April, 1976, in coming into the Tabernacle under the circumstances outlined herein, were not dissimilar from those which prompted the court in Central Presbyterian Church v. Black Liberation Front, supra, to state:

"The defendants, by their conduct, have given every indication that if not restrained from their acts, they will continue to disrupt the services of the Central Presbyterian Church. The plaintiffs have no adequate remedy at law and they are entitled to injunctive relief for the purpose of protecting their rights to religious worship and peaceful use of their property as guaranteed by the Constitution of the United States. The defendants, if they are restrained, will suffer no damage for the reason they have no rights under any conceivable stretch of the imagination to conduct themselves in the manner in which they did conduct themselves on June 15, 1969  
. . .

"These defendants acted wilfully together to

harass and disturb the members of the Central Presbyterian Church and the worship service. In doing so, they have apparently violated both criminal statutes of the State of Missouri and the United States. Their frequent attempts to intimidate the Church and its members in this area give every indication that unless restrained they will continue to harass, disturb and distress the plaintiff. Their conduct is reprehensible. Such conduct, if condoned, would lead to a breakdown in this society. It should not be tolerated and it will be enjoined."

### POINT III

#### THE FINDINGS OF FACT FULLY SUPPORT THE PERMANENT RESTRAINING ORDER ISSUED BY THE COURT

The defendant-appellant argues "at the very least the court should be required to find a reasonable possibility that the defendant will disrupt future worship services. It is not logical for a court to enjoin the defendant from committing certain acts if there is little or no possibility of the acts ever occurring". The court in its findings determined that "the conduct of the defendant and his threatened conduct as set forth in the letters described herein constituted and would constitute a violation of the rights of the plaintiff for which there is no adequate remedy at law; that the disruption and interference of the conference sessions of The Church of Jesus Christ of Latter-day Saints accomplished and threatened by the defendant have caused and would cause the plaintiff to suffer immediate and irreparable damage." The matter of defendant's capability of carrying out the threat is partly established by the fact that

did succeed in entering the Tabernacle and proceeding some distance towards the podium in the April, 1976, conference. The plaintiff could not be expected to await further disturbances of this nature, perhaps to occur in front of television cameras and to be broadcast worldwide, before taking some action to restrain the defendant from his threatened course of action. Defendant-appellant's argument is substantially to the effect that one cannot be restrained in his unlawful conduct unless he has an intention to make good his threats and that intent can only be implied from substantial disruption. There is in this case more than enough evidence in the accomplished disruption and the threatened future disruption of conference sessions to justify the finding of the court on which the order was based.

#### POINT IV

#### THE FINDINGS OF FACT ARE FULLY SUPPORTED BY THE TESTIMONY ADDUCED AT TRIAL

It is difficult for the writer to understand defendant's argument in Point IV that because there are conflicts in the testimony between plaintiff's witnesses and those of the defendant on the nature of defendant's conduct in April, 1976, that the court cannot make findings incorporating the testimony of plaintiff's witnesses. Obviously, there are disputes as to facts in every lawsuit and the function of the trier of fact is to determine where the truth lies. Defendant pushed aside Tom Truitt, head usher for that portion of the Tabernacle, in a manner that left no question as to defendant's design to get to

the podium. This is described consistently by Mr. Truitt (R. 313), by Brent L. Chandler, a member of The Church security department (R. 284) by Keith Nielsen, former security chief of The Church (R. 326) and by Joseph Earl Jones, present director of security (R. 411).

Defendant denied at the trial that he struck aside the usher or made the statement ascribed to him by Mr. Nielsen. With this testimony before the court, it made its findings. The defendant's observation that, "it is inappropriate for the court to make a finding of fact where there is direct and conflicting testimony" is beyond comprehension. This is the very thing lawsuits are made of.

Defendant further complained that the court failed to make a finding that defendant corresponded with the President of The Church for the purpose of discussing his excommunication from The Church and an ecclesiastical trial to be held of the leaders of said Church for alleged misconduct, and that the defendant believed the doctrines of said Church gave him a right to initiate such a trial.

In view of the nature of this action being one of the enjoining of a threatened trespass or interference with plaintiff's religious services, it is difficult to understand what defendant's good faith beliefs have to do with the matter. It is the disruption of plaintiff's religious services that are at issue and not the state of mind of the defendant when he causes such disruption. Such findings would be immaterial and are not necessary to justify the court's order.

POINT V

THIS WAS NOT A "PURELY RELIGIOUS DISPUTE" BUT A THREATENED INTERFERENCE WITH PLAINTIFF'S RIGHT TO CONDUCT ITS WORSHIP SERVICES AND THE COURT HAD JURISDICTION TO HEAR THIS MATTER

Again, it is difficult to understand what the defendant really wants in this case. It is he who has attempted to inject into a purely civil matter (the interference with plaintiff's worship services) justification for defendant's conduct in trying the President of The Church before the assembled conference. Counsel for the plaintiff repeatedly objected to such "justification" on the grounds that the civil court could not be expected to rule upon the propriety of the defendant's doctrinal arguments.

Respondent takes exception to the statement in defendant's brief that, "There is no way that a court can rule in the instant case without making a decision concerning Church doctrine". If the lower court is sustained it will be on the basis that this court will decide that the defendant did not have a right to present his grievances in the general conference sessions of the Church at the time and in the manner attempted because it was an unauthorized interference with the plaintiff's property rights and the right of religious worship of those for whom plaintiff held the property. This does not require any determination of Church doctrine. There may be all kinds of situations and avenues by which the defendant can air his grievances and even conduct trials of the leaders of The Church of Jesus Christ of Latter-day Saints, but this case has only to

do with the unauthorized use of Church property and the interruption of the format of general conference with the certain attendant publicity.

POINT VI

THE PERMANENT RESTRAINING ORDER OF THE DISTRICT COURT IS NOT SO VAGUE AS TO VIOLATE THE PROVISIONS OF RULE 65A(d), U.R.C.

Rule 65A(d) provides, "Every order granting an injunction and every restraining order shall be specific in terms; shall describe in reasonable detail and not by reference to the complaint or other document, the act or acts sought to be restrained; . . ."

Since the instant action had to do with interference by defendant with the conference sessions conducted by The Church of Jesus Christ of Latter-day Saints on property owned by the plaintiff on Temple Square, it would seem appropriate to permanently restrain defendant from entering upon that square "during such times and under such circumstances as to interfere with, impair or abridge by his conduct the religious services or conferences of other persons or the free exercise of religion by such other persons therein or thereon". There are a variety of ways in which defendant could disrupt future conference sessions. This order restrains him from entering upon the property of the plaintiff under any circumstances which would abridge the right of the members of The Church of Jesus Christ of Latter-day Saints to worship in said conference sessions. This implies that it is plaintiff and the leaders of The Church of Jesus Christ of

Latter-day Saints and not the defendant who will conduct the proceedings of those conferences and determine the format thereof. The language is the precise language of the court as contained in his minute order and which the court requested be set forth verbatim.

Defendant maintains that the court fails to clarify how the order is to be construed when the religious convictions of the defendant conflict with other worshippers on Temple Square. It might be observed that if the defendant's religious views are aired or expressed, or are accompanied by conduct, any of which interfere with the worship of the members of The Church of Jesus Christ of Latter-day Saints on Temple Square during general conference, then defendant's rights to free speech, religion and assembly cannot be given first priority. But when defendant's religious views can be expressed "at other times and places" and under "other circumstances so as not to interfere with the constitutionally protected rights of the members of The Church of Jesus Christ of Latter-day Saints", then those expressions are protected. The court made clear that neither party has "exclusive rights" of free speech, worship, or assembly, and that when two fundamental rights are in conflict they must be balanced. It is submitted that the restraining order of the court admirably achieved that balance.

CONCLUSION

The permanent restraining order of the District Court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that on this 11<sup>th</sup> day of August, 1978, I mailed two copies of the foregoing brief of Plaintiff-Respondent to Brian M. Barnard, Attorney for Defendant-Appellant, 214 East Fifth South, Salt Lake City, Utah 84111.

  
ALLEN M. SWAN  
Attorney for Plaintiff-Respondent